

Serial No. 10/055,562  
Docket No. - WRU 0253 PA

Remarks

Claims 1-11 remain pending in the present application. Claims 1-5 and 9-11 have been allowed. By the present amendment, claims 1-2, 5-9 and 11 have been amended for clarity, to remove conditional language and passive voice, as well as to remove certain transitional "whereby" phrases.

The specification has been amended in order to correct certain typographical and grammatical errors, and to add certain reference numbers for elements illustrated in the figures. No new matter has been added.

In the Office Action, claims 6 and 7 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. With reference to claim 6, the Examiner requested that the applicant clarify "what the claim is intended to be drawn to, i.e., either the pressure-restrictor alone or the combination of the pressure-restrictor and the resuscitator." Accordingly, applicant hereby confirms that claims 6 and 7 are directed to a pressure-restrictor for use in a resuscitator, which pressure-restrictor comprises a) a rigid housing structure, b) a moveable stopper member, and c) an automatic controller. Claim 7 is directed to the pressure-restrictor defined in claim 6, which pressure-restrictor further comprises a regulator.

Applicant disagrees that claim 6 "sets forth the combination of the pressure-restrictor and the resuscitator when describing the structure associated with the resuscitator." Rather, the components of the resuscitator (i.e., flow-generator, flow-output portion, etc.) are recited merely to provide a point of reference for the position of elements of the claimed pressure-restrictor. Figs. 8a, 8b, 9a, 9b, 10a, 10b, 11a, and 11b show the components of the pressure-restrictor in accordance with a typical embodiment of the present invention, independent of any combination with the resuscitator. Applicant has amended claim 6 to clarify that it is the pressure-restrictor that is claimed. Accordingly, in light of the explanation given above, applicant submits

JY

Serial No. 10/055,562  
Docket No. - WRU 0253 PA

that the claims are in compliance with the statute and respectfully requests that the rejection be withdrawn.

Also in the Office Action, claim 8 was rejected under 35 U.S.C. §102(b) as being anticipated by Melker (US 5,628,305), which the Examiner asserted teaches a method for providing volume-controlled manual positive-pressure artificial ventilation having the method steps recited in claim 8 of the present application. Applicant has amended claim 8 herein to recite "providing a volume restrictor, having one or more obturator members" and "relying on the volume restrictor and one or more obturator members to determine the maximum volume delivered in each breath, to deliver substantially-equivalent volumes in each breath." A method claim is anticipated only if each and every step as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Melker does not teach or suggest the step of "providing a volume restrictor, having one or more obturator members." Such obturator members are defined in the specification and drawings accompanying the present application (see, e.g., para. [0053] and Fig. 2), and appear in claim 5, which has been indicated by the Examiner as allowable over the prior art of record. Accordingly, no new matter has been added. In light of the amendment to claim 8 made herein, applicant respectfully submits that Melker does not support the instant rejection and respectfully requests that the rejection be withdrawn.

Regarding the Examiner's statement of reasons for the indication of allowable subject matter, applicant respectfully submits that although the reasons for allowance presents a variety of claim recitations that are not taught in the prior art, the reasons for allowance do not correspond to the respective scope and recitations of each of the independent claims. More specifically, with regard to claim 10, the Examiner indicated that the prior art of record fails to teach a method of monitoring pulmonary compliance and/or airway resistance during volume-controlled manual positive-pressure artificial ventilation, comprising: . . . making repetitive serial assessments of the ability to operate the resuscitator with delivery of the maximum volume specified by a volume restrictor

X

Serial No. 10/055,562  
Docket No. - WRU 0253 PA

with interference from the pressure-restrictor. However, contrary to this assertion, claim 10 in fact recites the method step "making repetitive serial assessments of the ability to operate the resuscitator with delivery of the maximum volume specified by the volume restrictor without interference from the pressure-restrictor." As such, applicant respectfully submits that the statement of reasons for the indication of allowable subject matter should not be used to interpret the scope of the claims of the present application.



Serial No. 10/055,562  
Docket No. - WRU 0253 PA

Conclusion

Applicant respectfully submits that, in view of the above amendments and remarks, the application is in condition for allowance. The Examiner is encouraged to contact the undersigned to resolve efficiently any formal matters or to discuss any aspects of the application or of this response. Otherwise, early notification of allowable subject matter is respectfully solicited.

Respectfully submitted,  
DINSMORE & SHOHL LLP

By:   
Brian L. Smiler  
Registration No. 46,458

One Dayton Centre  
One South Main Street, Suite 500  
Dayton, Ohio 45402-2023  
Telephone: (937) 223-2050  
Facsimile: (937) 223-0724  
E-mail: brian.smiler@dinslaw.com  
BLS/

✓